UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,787	06/11/2001	Steve Goddard	UNL 3055.1	1463

7590   12/30/2005

Michael J. Thomas
Harness, Dickey & Pierce
7700 Bonhomme Avenue
Suite 400
St. Louis, MO 63105

EXAMINER
HU, JINSONG

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/878,787	GODDARD ET AL.
	Examiner	Art Unit
	Jinsong Hu	2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>28 September 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,2,7-10,12 and 17-19</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-2, 7-10, 12 and 17-19</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-2, 7-10, 12 and 17-19 are presented for examination.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Devine et al.

(US 6,763,376).

4.   As per claim 1, Devine teaches the invention as claimed including a system

responsive to client requests for delivering data via a network to a client [col. 1, lines 11-

20], said system comprising:

at least one dispatch server receiving the client requests [320, 324, 330, Fig. 3;

col. 16, lines 29-33; col. 21, lines 60-65]; a plurality of network servers [col. 21, line 66 –

col. 22, line 3]; dispatch software executing in application-space on the dispatch server

to selectively assign the client requests to the network servers [col. 17, lines 9-15]; and

protocol software, executing in application-space on the dispatch server and each of the

network servers, to interrelate the dispatch server and network servers as ring members

of a logical, token-passing, fault-tolerant ring network [col. 11, lines 57 – col. 12, line 2],

wherein the plurality of network servers are responsive to the dispatch software and the

protocol software to deliver the data to the clients in response to the client requests

[col.17, lines 16-19].

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 2, 7-10, 12 and 17-19 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Devine et al. (US 6,763,376) in view of Jorgensen (US 6,590,885).

7.   As per claims 2, 10 and 12, Devine teaches the invention substantially as

claimed in claim 1. Devine also teaches the communication protocol in the system is

network standard protocol TCP/IP [col. 13, line 65 – col. 14, line 3]. Devine does not

specifically disclose an Open Source Interconnection (OSI) and the steps of switching of

the client requests at layer 4 of the OSI reference model, translates addresses

associated the client requests at layer 2 of the OSI reference model and reconstruction

software to coordinate state reconstruction after fault detection. However, Jorgensen on

the other hand teaches an Open Source Interconnection (OSI) and the steps of

switching of the client requests at layer 4 of the OSI reference model, translates

addresses associated the client requests at layer 2 of the OSI reference model and

reconstruction software to coordinate state reconstruction after fault detection [col. 41,

line 67 – col. 42, line 6; col. 42, line 19 – col. 45, line 38; col. 46, line 62 – col. 48, line

5]. However, it would have been obvious to a person of ordinary skill in the art at the

time the invention was made to combine the teaching of Devine and Jorgensen

because Jorgensen's OSI is a standard model in the art for communicating data packet

with TCP/IP protocol. One of ordinary skill in the art would have been motivated to

utilize a standard model in the system to make the system easily being configured and

integrated.

8.   As per claim 7, Devine teaches the protocol software communicates at any one

of the layers of the reference model [Fig. 5A].

9.   As per claims 8 and 9, Jorgensen teaches the reference model is the Open

Source Interconnection (OSI) reference model, and wherein the dispatch software

performs switching of the client requests at layer 7 of the OSI reference model and then

performs translating addresses and switching of the client requests at layer 3 of the OSI

reference model [col. 42, lines 33 – col. 45, line 38; col. 47, line 56 – col. 48, line 5].

10.   As per claim 17, Devine teaches the invention substantially as claimed including

a system responsive to client requests for delivering data via a network to a client [col.

1, lines 11-20], said system comprising:

at least one dispatch server receiving the client requests [320, 324, 330, Fig. 3; col. 16, lines 29-33; col. 21, lines 60-65]; a plurality of network servers [col. 21, line 66 – col. 22, line 3]; dispatch software executing in application-space on the dispatch server to selectively assign the client requests to the network servers, and protocol software, executing in application-space on the dispatch server and each of the network servers to interrelate the dispatch server and network servers as ring members of a logical, token-passing, fault-tolerant ring network, wherein the plurality of network servers are responsive to the dispatch software and the protocol software to deliver the data to the clients in response to the client requests [col. 11, lines 57 – col. 12, line 2; col. 17, lines 9-19].

11.   Devine does not specifically teach the system is structured according to an Open Source Interconnection (OSI) reference model. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Devine and Jorgensen because Jorgensen's OSI is a standard model in the art for communicating data packet in TCP/IP protocol. One of ordinary skill in the art would have been motivated to utilize a standard model in the system to make the system easily being configured and integrated.

12.   As per claim 18 and 19, Jorgensen teaches the step of translates addresses associated with the client requests at layer 2 and layer 3 of the OSI reference model [col. 42, lines 19-67].

Conclusion

13.   Applicant's arguments filed on 9/28/05 for claims 1-2, 7-10, 12 and 17-19 have

been fully considered but they are not deemed to be persuasive.

14.   In the remarks, applicant argued in substance that (1) Devine does not teach any

dispatch software executing in the application-space on the dispatch server; (2) Devine

does not teach protocol software executing in application-space on the dispatch server

and each of the network server, interrelating the dispatch server and the network

servers as ring members; (3) Devine does not teach a fault-tolerant ring network; (4)

Jorgensen does not teach dispatch software executing in the application-space on the

dispatch server.

15.   Examiner respectfully traverses applicant's remarks:

        A.   As to point (1), applicant fails to consider the teaching of the Devine's

reference for receiving the requests from user applets by dispatch server [i.e., StarOE

proxy] and forwarding the requests to the appropriate network server [col. 16, lines 29-

33; col. 17, lines 9-19], all of these functions are implemented by executing software

[i.e., proxy process] on the dispatch server. Thus, Devine does teach dispatch software

executing in the application-space on the dispatch server.

        B.   As to points (2) and (3), applicant fails to consider the teaching of the

Devine's reference for forwarding user's request by dispatch server to network servers

[col. 16, lines 29-33], which are members of a ring network, and the whole network is a

Ethernet backbone network [col. 11, line 65 – col. 12, line 2]. Thus, Devine does teach

protocol software executing in application-space on the dispatch server and each of the

network servers, and interrelating the dispatch server and the network servers as ring

members.

C.   As to point (4), applicant fails to consider the teaching of the Devine's

reference for all the limitations except switching request in layer 4 and translating

address in layer 2, there is no reason to require the Jorgensen's reference to show

these limitations again. Furthermore, Jorgensen's reference is added for teaching the

defective of Devine's reference, and the combination of both teaching is obvious to an

ordinary person in the art and implemented. Thus, Jorgensen is still a relevant prior art

reference.

Accordingly, Devine and Jorgensen are still relevant prior art references.

16.   THIS ACTION IS MADE FINAL. See MPEP §706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17.   A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

18.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965.

The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone

number for the organization where this application or proceeding is assigned is (571)

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Jinsong Hu

December 23, 2005

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100